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Convention on the Rights of the Child

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Committee on the Rights of the Child

Consideration of reports submitted by States parties under article 8 (1) of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

Reports of States parties due in 2011

Algeria*

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Introduction

1. The General Assembly of the United Nations adopted the Convention on the Rights of the Child on 20 November 1989.

2. In accordance with its article 49 (1), the Convention entered into force on 2 September 1990.

3. The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict was adopted by the General Assembly of the United Nations on 25 May 2000. It entered into force on 12 February 2002.

4. The present document is the initial report of Algeria, submitted under article 8 (1) of the Optional Protocol. It was produced by a working group established for that purpose. The National Advisory Commission for the Promotion and Protection of Human Rights was also involved in this exercise, and its comments were taken into account.

5. Ratification of the Optional Protocol by Algeria did not require of the Algerian Government any decisions or new measures to bring domestic law into line with the Protocol, as the recruitment and participation of minors in the Algerian armed forces was already prohibited by law.

General measures of implementation

6. Algeria signed the Convention on the Rights of the Child on 26 January 1990 and ratified it on 19 December 1992. It acceded to the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict on 6 May 2009.

7. In becoming a party to these two human rights instruments, the Algerian State undertook to harmonize its national legislation where necessary, within the framework of the national system for legislative and regulatory reform, while bearing in mind the key principles relating to children, namely the best interests of the child, the right to life and survival, non-discrimination and respect for the views of the child.

8. The ongoing process of reform recently culminated in the adoption by the parliament of a framework law on children, published in the Official Gazette as Act No. 15 12 of 15 July 2015.

9. The Act was the subject of broad consultation with the various relevant stakeholders, including institutions, civil society, lawyers, religious leaders, educators, doctors, psychologists and media personnel.

10. In addition to filling gaps and clarifying a number of situations, the Act consolidates the various laws covering children, in particular in connection with juvenile justice. It establishes a national mechanism for monitoring children's issues, the National Ombudsman, which is vested with considerable powers and will have authority to question the Government on issues within its mandate and, together with other stakeholders, to design programmes, plans and strategies for the full development of children.

11. In its preamble, the new Act refers to the Convention on the Rights of the Child and the Optional Protocol, which it reflects in article 6, where it is stated that the State guarantees the protection of children and protects their rights in emergencies, disasters and armed conflicts.

A. Article 1: Direct participation in hostilities

12. The concept of "direct participation in hostilities" is not defined in the laws or regulations of Algeria. Nonetheless, in its most traditional interpretation, the concept of "hostilities" can be understood to refer to the responsibilities of the National People's Army, which, under article 25 of the Algerian Constitution, include:

- Preserving and defending national independence and national sovereignty
- Defending the country's unity and territorial integrity
- Protecting its terrestrial, air and maritime space

13. For its part, Act No. 91-23 of 6 December 1991, as amended and supplemented, on the participation of the National People's Army in public-safety missions, excluding emergencies, states that the National People's Army may be ordered to respond to such imperatives as combating terrorism and subversion.

14. In this regard, the term "hostilities" refers to the military operations undertaken within the context of the recognized right of States to self-defence against any internal or external aggression or threat. The legality of hostilities is a fundamental principle in military operations of the National People's Army, which is convinced that war waged by adults is always detrimental to children. It should therefore be legally regulated and regarded as a last resort.

15. In Algeria, the National People's Army does not include in its ranks persons under 18 years of age, use minors in the performance of its duties or under any circumstances authorize the recruitment or enrolment of any citizen who is not at least 18.

B. Article 2: Compulsory recruitment

16. Article 3 of Act No. 14-06 of 9 August 2014, the National Service Act, provides for the enrolment of citizens in national service from the age of 19 years. Enrolment is preceded by:

- Registration of citizens who are 17 years of age
- Medical screening
- Call-up when the individual turns 19

17. In addition, Act No. 87-16 of 1 August 1987 establishing and determining the functions and structure of the people's defence sets the minimum age of persons involved in civil defence at 18 years.

18. Ordinance No. 76-110 of 9 December 1976 on the military obligations of Algerian nationals also provides that Algerians are subject to military obligations, to be performed, in succession, as follows:

- National service
- Inactive duty
- Primary reserve
- Supplementary reserve

19. Article 17/4 of Ordinance No. 06-02 of 28 February 2006 on the General Status of Military Personnel provides that a citizen may not be recruited into the National People's Army as either a career or contractual member unless he or she has the necessary physical, psychological and intellectual aptitudes and qualifications and also meets the age requirements.

20. Article 10 of Presidential Decree No. 08-134 of 6 May 2008, which established the conditions of recruitment of career officers of the National People's Army, states that "all citizens 18 years of age or older may apply for the recruitment competition as officer candidates".

21. This requirement applies to the recruitment of non-commissioned officers and enlisted personnel. Eighteen is also the minimum age of recruitment for civilians classed as military personnel under Decree No. 74-60 of 20 February 1974, which established a category of civilian staff members treated as military personnel in the Ministry of Defence and defined the statutory rules applicable to the permanent members of that staff category.

22. Applicants for recruitment competitions must submit an application that includes their date and place of birth, their complete filiation and an identity document. They also undergo a thorough medical examination. An administrative enquiry is conducted to verify the initial information provided.

23. The competition is the only means of recruitment into the National People's Army and, as such, confirms the voluntary nature of enlistment.

24. The effective minimum length of service is 25 years for officers, 6 years for non-commissioned officers and 4 years for enlisted personnel.

25. Open days organized by the various branches of the National People's Army and programmes broadcast by the media are the most widely used means of providing the public with information about possible careers in the National People's Army.

26. The regulations in force in the Army provide for the right of a subordinate not to carry out unlawful orders. Similarly, article 242 of the Code of Military Justice provides for the punishment of crimes and offences that are contrary to the laws and customs of war and international conventions.

C. Article 3: Voluntary recruitment

Military academies

27. The "Cadets of the Nation" academy, regulated by Presidential Decree No. 08-340 of 26 October 2008, is a public administrative institution under the Ministry of Defence. Supervision of the work of the academy is the joint responsibility of the Ministry of Education and the Ministry of Defence.

28. Prospective cadets must be 12 years old by 31 December of the year concerned to be considered for admission to the academy's middle cycle and 16 by 31 December of the year concerned to be considered for the secondary cycle. The academy offers general education courses in the middle and/or secondary cycles taught by teachers from the Ministry of Education. The cadets' education includes general education, provided in keeping with the curricular and duration requirements of the Ministry of Education, and specific education, focused on developing patriotism, discipline and a sense of responsibility.

29. Cadets take part in the end-of-cycle examinations organized by the Ministry of Education with a view to obtaining, after each cycle, a middle school certificate or a secondary school baccalaureate.

30. Admission to the academy is subject to successful completion of a national competition open to students in their fifth year of primary education and to those in their fourth year of middle school who have passed their end-of-cycle examinations with distinction.

31. The contract is signed by the legal guardian and remains valid until the end of the secondary cycle. It may be terminated at any time at the request, formulated in accordance with the terms of the contract, of the legal guardian.

32. Cadets may be expelled from the academy during their schooling by decision of the disciplinary council for misconduct punishable by expulsion or by decision of the school council for physical incapacity or academic underachievement.

33. Cadets have no military status. They are subject to internal regulations defining their rights and duties and have the same school holidays as students enrolled in institutions under the Ministry of Education.

34. It is strictly forbidden for educators at the academy to insult cadets, humiliate them or subject them to any corporal punishment, regardless of how they may have behaved.

35. Cadets who obtain a baccalaureate are counselled, as appropriate:

- To pursue their studies in an officer-candidate school of the National People's Army or

- To begin university studies under the auspices of the Ministry of Defence

36. Cadets who fail to obtain the baccalaureate and are not allowed to repeat the course are oriented towards training in a school for non-commissioned officers of the National People's Army.

37. Seven Cadets of the Nation academies have been established:

- The Cadets of the Nation academy of Oran (by Presidential Decree No. 08-341 of 26 October 2008)
- The Cadets of the Nation academy of Blida (by Presidential Decree No. 12-135 of 21 March 2012)
- The Cadets of the Nation academy of Béchar (by Presidential Decree No. 12-136 of 21 March 2012)
- The Cadets of the Nation academy of Sétif (by Presidential Decree No. 12-137 of 21 March 2012)
- The Cadets of the Nation academy of Batna (by Presidential Decree No. 12-138 of 21 March 2012)
- The Cadets of the Nation academy of Laghouat (by Presidential Decree No. 14-185 of 15 June 2014)
- The Cadets of the Nation academy of Bejaïa (by Presidential Decree No. 14-186 of 15 June 2014)

D. Article 4: Armed groups distinct from the armed forces

38. A system for the exercise of self-defence to prevent or respond to acts of terrorism and subversion targeting populated areas, gathering places and public social infrastructure was established pursuant to Executive Decree No. 97-04 of 4 January 1997. The system is under the responsibility and control of the authorities responsible for maintaining order and security.

39. Self-defence is exercised by citizen volunteers organized into groups that are duly authorized by the Government. Self-defence does not give rise to remuneration, payment or compensation of any kind, as it is exercised in a spirit of patriotism and citizenship.

40. The enlistment of children in self-defence is prohibited under several provisions of domestic law:

- Act No. 87-16 of 1 August 1987 establishing and determining the functions and structure of the people's defence sets the minimum age of persons involved in civil defence at 18.
- Ordinance No. 97-06 of 21 January 1997 on war materiel, weapons and ammunition, states that natural persons, excluding minors under 18 years of age, may be authorized to acquire and possess certain weapons and ammunition either automatically because of their social or professional situation or because of special circumstances.

41. Similarly, the Criminal Code has a number of provisions that criminalize any child endangerment:

- **Article 303 bis 4**: "Trafficking in persons shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs".

Trafficking in human beings is punishable by a prison term of 3 to 10 years and a fine of 300,000 to 1 million dinars.

When the trafficking victim is a person in a vulnerable situation by reason of age, illness or physical or mental incapacity known or apparent to the perpetrator, the punishment is a prison term of 5 to 15 years and a fine of 500,000 to 1.5 million dinars.

- **Article 303 bis 11**: "The legal person shall be declared criminally liable, under the conditions set out in article 51 bis of the present Act, for the offences provided for in the present section".

The legal person incurs the penalties prescribed in article 18 bis of this Act in accordance with the provisions of:

- **Article 314**: "Anyone who abandons or causes to be abandoned, neglects or causes to be neglected, in an isolated place, a child or incapable person whose physical or mental state renders that child or incapable person unable to fend for him- or herself, shall, based on that act alone, be liable to imprisonment of 1 to 3 years. If the abandonment or neglect results in illness or total incapacity lasting for more than 20 days, the term of imprisonment shall be 2 to 5 years. If the child or incapable person is left mutilated or crippled, or with a permanent disability, the penalty shall be imprisonment of 5 to 10 years. If the act of abandonment or neglect results in death, the penalty shall be imprisonment of 10 to 20 years".
- **Article 315**: "Where the perpetrators are the relatives in the ascending line or any other person with authority or custody over the child or incapable person, the penalty shall be imprisonment for 2 to 5 years in the cases provided for in article 314 (1); imprisonment of 5 to 10 years in the case provided for in article 314 (2); imprisonment of 10 to 20 years in the case provided for in article 314 (3); and life imprisonment in the case provided for in article 314 (4)".
- **Article 316**: "Anyone who abandons or causes to be abandoned, neglects or causes to be neglected, in a non-isolated place, a child or incapable person whose physical or mental state renders that child or incapable person unable to fend for him- or herself, shall, based on that act alone, be liable to imprisonment of 3 months to 1 year. If the abandonment or neglect results in illness or total incapacity lasting for more than 20 days, the term of imprisonment shall be 6 months to 2 years. If the child or incapable person is left mutilated or crippled, or with a permanent disability, the penalty shall be imprisonment of 2 to 5 years. If the death of the child or incapable person ensues, the penalty shall be imprisonment of 5 to 10 years".
- **Article 319 bis**: "Anyone who sells or buys a child under 18 years of age for any purpose or in any form shall be punished by imprisonment for a term of 5 to 15 years and a fine of 500,000 to 1.5 million dinars. The instigator of or intermediary in the conclusion of the sale of the child shall be liable to the same penalties. When the offence is committed by an organized criminal group or when it has a transnational nature, the punishment shall be imprisonment for a term of 10 to 20 years and a fine of 1 million to 2 million dinars. An attempt to commit such an offence shall incur the same penalties as an offence that has been committed".

42. Prosecution of the offences mentioned above is time-barred after 10 years in the case of major offences and after 3 years in the case of lesser offences. The statute of limitations begins to run when the child reaches the age of majority.

E. Article 5: Other international instruments and international humanitarian law

43. Algeria is a party to other international instruments relating to the realization of the rights of the child, including:

- The Geneva Conventions of 12 August 1949, ratified, after the deposit of the instrument of accession on 20 June 1960, by the provisional Government of Algeria during the war of national liberation

- The Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I), and the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Protocol II), ratified by Algeria pursuant to Presidential Decree No. 89-68 of 16 May 1989
- The International Labour Organization Worst Forms of Child Labour Convention, 1999 (No. 182), ratified by Algeria on 28 November 2000
- The African Charter on the Rights and Welfare of the Child, adopted in Addis Ababa in July 1990, ratified by Algeria pursuant to Presidential Decree No. 03-242 of 8 July 2003

F. Article 6: Effective implementation and enforcement of the provisions of the Optional Protocol

44. Article 132 of the Algerian Constitution states that, treaties ratified by the President of the Republic, in the circumstances provided for in the Constitution, take precedence over the law. As a result, all Algerian institutions are obliged to apply the provisions of the present Optional Protocol, which was ratified by Algeria pursuant to Presidential Decree No. 06-300 of 2 September 2006.

45. It is worth noting that the National People's Army has introduced the teaching of international humanitarian law to officers, non-commissioned officers and enlisted personnel.

46. The National Commission for International Humanitarian Law was established pursuant to Decree No. 08-163 of 4 June 2008. The Commission, which answers to the Minister of Justice, is responsible for submitting proposals to the Government on the ratification of treaties relating to international humanitarian law, raising awareness of international humanitarian law through meetings, seminars and symposia and ensuring its implementation.

47. Like the dissemination of other human rights instruments, the dissemination of the Optional Protocol is an activity that involves both institutional stakeholders (parliament, the Government, advisory bodies etc.) and the various components of civil society (non-governmental organizations, activists, the media etc.).